TITLE 86: REVENUE

PART 100
INCOME TAX

Section 100.2490 Foreign Trade Zone/High Impact Business Dividend Subtraction (IITA Sections 203(a)(2)(K), 203(b)(2)(L), 203(c)(2)(O), 203(d)(2)(M))

a) Taxpayers are entitled to subtract from taxable income (adjusted gross income, in the case of an individual) an amount equal to dividends paid by a corporation that:

1) conducts business operations in a federally designated Foreign Trade Zone or Sub-Zone, and

2) is designated by the Department of Commerce and Community Affairs as a High Impact Business located in Illinois.

However, only dividends not eligible for the subtraction provided in Section 100.2480 of this Part may be subtracted under this Section.

b) A corporation conducts business operations in a federally designated Foreign Trade Zone or Sub-Zone when any portion of its total business activity during a taxable year is operated within a federally designated Foreign Trade Zone or Sub-Zone. For the purpose of this Section, business activity within a federally designated Foreign Trade Zone or Sub-Zone shall be measured by means of the factors ordinarily applicable to the corporation under IITA Section 304(a), (b), (c), or (d); except that, in the case of a corporation ordinarily required to apportion business income under Section 304(a), such corporation shall not use the sales factor in the computation. Thus, for example, for taxable years ending on or after December 31, 2000, for purposes of determining whether dividends may be subtracted under this Section, a corporation that apportions its business income under Section 304(a) using only the sales factor in accordance with Section 304(h) must still compute its property and payroll factors. In measuring the business activity of a corporation within a federally designated Foreign Trade Zone or Sub-Zone, the apportionment factors of that corporation shall be determined without regard to the factors or business activity of any other corporation and, in the case of a corporation engaged in a unitary business with any other person, the apportionment factors of that corporation shall be determined as if it were not engaged in a unitary business with such other person.

1) 304(a) Corporations. A corporation using Section 304(a) to apportion business income to Illinois shall determine the ratio of the corporation's property and payroll within a federally designated Foreign Trade Zone or Sub-Zone to the

corporation's property and payroll everywhere. If the ratio so computed is greater than 0%, and the other requirements of this Section are met, the dividends paid by the corporation shall qualify for this subtraction. In the case where a corporation does not have any property or payroll within a federally designated Foreign Trade Zone or Sub-Zone, the corporation is not conducting any portion of its business operations within a federally designated Foreign Trade Zone or Sub-Zone for the purpose of this Section.

A) Example 1: In the tax year ending December 31, 1995, Taxpayer received dividends from X corporation (hereafter referred to as "X"). X, a calendar year taxpayer, manufactures and sells widgets at wholesale in Illinois and various other states. The widgets are manufactured at X's plant in Illinois, which is not located in a federally designated Foreign Trade Zone or Sub-Zone. X does not have employees who perform any services in a federally designated Foreign Trade Zone or Sub-Zone. X owns 100% of the stock of A corporation (hereafter referred to as "A"), whose sole business activity consists of the distribution of X's widgets. A's trucks take delivery of the widgets at X's plant, and then deliver the widgets to customers of X, including customers located in a federally designated Foreign Trade Zone. In determining its business income apportionable to Illinois in 1995, X used the 3-factor formula of property, payroll, and sales under IITA Section 304(a). Thus, in order to determine whether it conducts business operations in a federally designated Foreign Trade Zone or Sub-Zone, X must compute the ratio of its property and payroll in a federally designated Foreign Trade Zone or Sub-Zone to its property and payroll everywhere. In making such computation, it may not use its sales factor, nor may it consider the factors or business activity of A. As a result, regardless of whether X is designated a High Impact Business located in Illinois, Taxpayer may not subtract dividends paid by X. Because X does not have any property or payroll within a federally designated Foreign Trade Zone or Sub-Zone, it is not conducting any portion of its business operations within a federally designated Foreign Trade Zone or Sub-Zone as required by this Section.

B) Example 2: The facts are the same as in Example 1, except that X rents a warehouse in which it maintains an inventory of widgets pending shipment to customers. The warehouse is located in a federally designated Foreign Trade Zone. Since the ratio of X's property and payroll within a federally designated Foreign Trade Zone or Sub-Zone to its property and payroll everywhere is greater than 0%, X conducts a portion of its business operations within a federally designated Foreign Trade Zone. Thus, Taxpayer has met the requirement under this Section that it receive dividends from a corporation that conducts business operations within a federally designated Foreign Trade Zone or Sub-Zone.

2) All Other Corporations. A corporation using a 1-factor apportionment formula under IITA Section 304(b), (c), or (d) shall determine business activity conducted within a federally designated Foreign Trade Zone or Sub-Zone by comparing business income from sources within a federally designated Foreign Trade Zone or Sub-Zone and everywhere else pursuant to its ordinarily

applicable factor under Section 304(b), (c), or (d). A corporation using an alternative method of apportionment under Section 304(f) shall petition the Department for approval of an appropriate method of determining its qualification under this Section, and only upon the Department's approval shall the corporation be allowed to use a method not provided in this Section.

A) Example 3: In the tax year ending December 31, 1996, Taxpayer received dividends from Z Airlines, Inc (hereafter referred to as "Z"). Z provides interstate transportation of passengers and freight. Z's corporate headquarters is located in a federally designated Foreign Trade Zone in Illinois. Its hub is also located in Illinois, but not in a federally designated Foreign Trade Zone or Sub-Zone. Z's planes regularly arrive and depart from its hub, and regularly fly over a federally designated Foreign Trade Zone in route to various locations. Z owns 100% of the stock of B corporation (hereafter referred to as ("B"). B's sole business activity consists of transporting freight from Z's planes to local destinations in Illinois. B's trucks take delivery of the freight at Z's hub, and deliver the freight to Z's customers, including customers located in a federally designated Foreign Trade Sub-Zone. In 1996, B delivered within the federally designated Foreign Trade Sub-Zone at least 1 ton of freight the distance of one mile for a consideration. In determining its business income apportionable to Illinois in 1996, Z and B used the apportionment formula under IITA Section 304(d) on a combined basis. In order to determine whether it conducts business operations within a federally designated Foreign Trade Zone or Sub-Zone, Z is required to use the same apportionment formula under IITA Section 304(d) as if it were not engaged in a unitary business with B. As a result, regardless of whether Z is a High Impact Business located in Illinois, Taxpayer may not subtract dividends paid by Z. Because Z has no business income from sources within a federally designated Foreign Trade Zone or Sub-Zone applying IITA Section 304(d), no portion of Z's business operations are conducted in a federally designated Foreign Trade Zone or Sub-Zone as required by this Section.

B) Example 4: The facts are the same as in Example 1, except that Z conducts the activities of B as a division. In determining its business income apportionable to Illinois in 1997, Z used the apportionment formula under IITA Section 304(d). In order to determine whether it conducts business operations within a federally designated Foreign Trade Zone or Sub-Zone, Z must use the same formula. Since Z has business income from sources within a federally designated Foreign Trade Sub-Zone, it conducts a portion of its business operations within a federally designated Foreign Trade Zone or Sub-Zone. Thus, Taxpayer has met the requirement under this Section that it receive dividends from a corporation that conducts business operations within a federally designated Foreign Trade Zone or Sub-Zone.

c) Taxpayers are entitled to this subtraction in the taxable year in which qualifying dividends are paid by corporations. Dividends are qualifying dividends if paid by the corporation during a taxable year of the corporation with respect to which the requirements of this Section are met. Corporations paying dividends shall be deemed to have started business operations within a federally designated Foreign Trade Zone or Sub-Zone from the later of:

1) The date the Foreign Trade Zone or Sub-Zone in which the corporation paying the dividends is located was officially federally designated;

2) The date the corporation paying dividends commenced operations in the federally designated Foreign Trade Zone or Sub-Zone as a designated High Impact Business located in Illinois; or

3) The effective date of the Public Act enacting this subtraction (January 1, 1986).

d) See 20 ILCS 655/5.5 regarding designation by the Department of Commerce and Community Affairs as a High Impact Business.

e) Limitations.

1) This Section allows taxpayers to subtract distributions from a corporation only to the extent:

A) The distributions are characterized as dividends;

B) The dividends are included in federal taxable income (in the case of an individual, adjusted gross income) of the taxpayer;

C) The dividends are not eligible for the subtraction provided in IITA Section 203(a)(2)(J), IITA Section 203(b)(2)(K), IITA Section 203(c)(2)(M), or IITA Section 203(d)(2)(K) (regarding dividends paid by a corporation that conducts all or substantially all of its operations in an Illinois Enterprise Zone or Zones); and

D) The taxpayer has not subtracted the dividends from federal taxable income (in the case of an individual, adjusted gross income) under any other provision of Section 203 of the IITA.

2) Example 5: Taxpayer, an S corporation shareholder, receives a distribution from an S corporation designated a High Impact Business and that conducts business operations in a federally designated Foreign Trade Zone. The Taxpayer is not entitled to the subtraction modification provided under this Section since a distribution by an S corporation is generally not characterized as a dividend. See Section 1368 of the Internal Revenue Code.

3) Example 6: Taxpayer, a corporation, receives a dividend from another corporation that qualifies for the 70% dividends received deduction under Section 243(a)(1) of the Internal Revenue Code. Because only 30% of the dividend is included in Taxpayer's federal taxable income, this Section allows Taxpayer to subtract only 30% of the dividend from its federal taxable income.

(Source: Added at 27 Ill. Reg. 13536, effective July 28, 2003)